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De James v. Magnificence Carriers, Inc.: "Minimum Contacts" and "National Contacts" as Bases for In Personam Jurisdiction in Admiralty Claims

In the 1981 admiralty case of *De James v. Magnificence Carriers, Inc.*,[1] the Third Circuit Court of Appeals was faced with the issue of whether, under recent Supreme Court decisions, a New Jersey federal district court could secure jurisdiction over a Japanese corporation under either the state's long-arm statute or a national contacts theory of federal jurisdiction. The court failed to find the requisite "minimum contacts"[2] or "reasonable anticipation"[3] on which to base personal jurisdiction over the defendant Japanese corporation[4] and likewise, on the facts of the case, failed to accept the application of a national contacts test to supply a basis for personal jurisdiction.[5]

Joseph De James, a citizen of New Jersey, allegedly suffered personal injuries while working aboard the vessel *M.V. Magnificence Venture*, then moored at a pier in Camden, New Jersey. The plaintiff alleged his injuries were directly caused by defective work performed by Hitachi Shipbuilding and Engineering Co., Ltd. (hereinafter Hitachi) of Japan in converting the *M.V. Magnificence Venture* into an automobile carrier. Under the admiralty jurisdiction of the court, pursuant to 28 U.S.C. § 1333, the plaintiff sought to recover damages.

At the district court level, defendant Hitachi moved to dismiss the complaint for insufficient service of process and for lack of in personam jurisdiction. Hitachi supported its motion with an affidavit stating that all work performed on the *M.V. Magnificence Venture* was done at its shipyards in Osaka, Japan, and that Hitachi conducted no business in the state of New Jersey.[6] Plaintiff responded by arguing that Hitachi's con-

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[1] De James v. Magnificence Carriers, Inc., 491 F.Supp. 1276 (D.N.J. 1980), aff'd, 654 F.2d 280 (3rd Cir.), cert. denied, 102 S. Ct. 642 (1981).

[2] International Shoe Co. v. Washington, 326 U.S. 310 (1945) (landmark case which first applied the "minimum contacts" test for in personam jurisdiction).

[3] World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286 (1980) (plaintiff purchased an automobile from a New York dealer and suffered personal injuries in an accident in Oklahoma. Held, that Oklahoma had no jurisdiction over the dealer merely because plaintiff's use of the car outside of New York was foreseeable. It must be "reasonably anticipated" that the defendant be subject to suit in the state).

[4] 654 F.2d at 284-86.

[5] Id. at 286-90.

[6] 491 F.Supp. at 1277-78.

tacts with New Jersey were adequate for jurisdictional purposes, and that Hitachi's aggregate contacts with the United States as a whole could be considered in determining jurisdiction since it was being sued on a federal claim.[7] The court held in favor of defendant Hitachi on both issues, and granted the motion for dismissal.[8]

On appeal to the Third Circuit, De James argued that the district court erred in failing to find that Hitachi's contact with New Jersey was sufficient to satisfy due process under the New Jersey long-arm statute and, in the alternative, that the district court erred in failing to aggregate Hitachi's contacts with the United States as a whole.[9] In arguing that the one contact of Hitachi with New Jersey (the docking of the converted vessel in a New Jersey port) was sufficient to satisfy the requirement of "minimum contacts," De James relied heavily on the "stream-of-commerce" theory as a basis for jurisdiction.[10] Because the conversion work in effect made Hitachi the manufacturer of the vessel, under the stream of commerce theory, it was argued that Hitachi should be subject to process in any port where the ship docked and the allegedly defective product caused injury.[11]

At the appellate level the plaintiff argued for the first time that service of process had been effected by wholly federal means such that the court should have aggregated all of Hitachi's contacts with the United States to support jurisdiction.[12] Plaintiff noted that he had served process on the Japanese Minister of Foreign Affairs in compliance with the *Convention on Service Abroad of Judicial and Extrajudicial Documents in Civil and Commercial Matters*.[13] Although the district court had not been made aware that service was made pursuant to the Convention on Service Abroad, the court of appeals recognized that plaintiff had presented the national contacts theory below and, absent objection from Hitachi, found it proper to consider the argument.[14]

The court of appeals first addressed the issue of the applicable law to determine if personal jurisdiction could be obtained over Hitachi in an admiralty case. The court noted that although the instant case was not a diversity case, the principles of due process announced in diversity cases such as *International Shoe* and its progeny are "also applicable to nondiversity cases."[15] Specifically, in dealing with the plaintiff's allegations that Hitachi had sufficient contacts with New Jersey to satisfy its long-arm

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[7] Id. at 1278.

[8] Id. at 1284.

[9] 654 F.2d at 283.

[10] Id.

[11] Id. at 285.

[12] Id. at 283.

[13] 654 F.2d at 283. Convention on Service Abroad of Judicial and Extrajudicial Documents, done Nov. 15, 1965, 20 U.S.T. 361, T.I.A.S. No. 6638, 658 U.N.T.S. 163, [hereinafter cited as Convention on Service Abroad].

[14] 654 F.2d at 287.

[15] Id. at 283.

statute,[16] the court stated it was bound by the due process constraints of the fourteenth amendment.[17]

Based primarily on *World-Wide Volkswagen v. Woodson*,[18] the most recent Supreme Court decision on due process requirements for long-arm jurisdiction, the Third Circuit found that the single fortuitous contact of the *Magnificence Venture* docking in New Jersey was insufficient contact on which to base jurisdiction.

In *World-Wide Volkswagen*, the plaintiff purchased an automobile from a New York dealer and then suffered personal injuries in an accident in Oklahoma allegedly caused by defects in the auto. In refusing to find the New York dealer subject to Oklahoma's jurisdiction, the Supreme Court indicated that due process requires a potential defendant to have engaged in conduct such that he has a reasonable expectation that he may be "haled into court" in the forum state.[19] The Court found that absent other factors, the possibility that a product might find its way into the forum state, or that the defendant could foresee that its product might affect the forum state would not constitute sufficient facts to support the "reasonable expectation" standard.[20]

The court of appeals specifically rejected the plaintiff's "stream-of-commerce" argument, stating that his reliance on *Stabilisierungsfonds Fur Wein v. Kaiser Wine Distributors Pty. Ltd.*[21] and *Duple Motor Bodies, Ltd. v. Hollingsworth*[22] was misplaced.[23] In examining the "stream-of-commerce" theory, the court of appeals noted its use as a means of sustaining

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[16] Id. at 284.

[17] Id. at 284. The court noted the anomaly of a federal court in a nondiversity case (admiralty in *De James*) being limited by the fourteenth amendment's due process restrictions imposed on the states, rather than the fifth amendment restrictions imposed on the federal government. The court felt compelled to find this result as Congress has not authorized national service of process in admiralty claims and thus a plaintiff is forced to utilize state long-arm statutes. Id. Judge Gibbons in dissent argues that the court need only consider fifth amendment limits in federal question cases as for a federal claim the party's rights and liabilities should be determined under uniform, national law. Id. at 292. The significant difference in applying only fifth amendment requirements according to Judge Gibbons, is that a defendant's national contacts enter into the determination of fundamental fairness, rather than the defendant's contacts with only the forum state. Id.

[18] 444 U.S. 286 (1980).

[19] Id. at 297.

[20] Id. at 295.

[21] 647 F.2d 200 (D.C. Cir. 1981). In this case, German wine producers brought a trademark infringement action against an Australian wine producer and others. The court of appeals held the Australian wine producer subject to personal jurisdiction under the District of Columbia long-arm statute, which permits the exercise of jurisdiction to the limits of Due Process. The court found that the Australian wine producer's activities of "ship[ping] goods to an intermediary with the expectation that [they] will distribute the goods in a region that includes the District of Columbia," was transacting business within the District of Columbia. Id. at 205. Furthermore, the court noted that the Australian wine producer had granted an exclusive distributorship which included the District of Columbia, making "sales of their wine here not merely foreseeable, but affirmatively welcomed." Id.

[22] 417 F.2d 231 (9th Cir. 1969). *Duple Motor Bodies* was a product liability action against an English manufacturer of coach bodies for injuries suffered in Hawaii. The court held that under the Hawaii long-arm statute the sale of a negligently manufactured coach to a distributor with knowledge that it was to be used in Hawaii was adequate to support jurisdiction. The

jurisdiction in product liability cases involving an extensive chain of distribution.[24] Based on the assumption that due process does not allow a manufacturer to insulate itself from "long-arm" jurisdiction by the use of middle-men or by keeping itself ignorant of its product's ultimate destination, courts have found that the indirect benefit which accrues to the manufacturer by virtue of eventual sales in the forum state is adequate to meet due process requirements.

The court of appeals distinguished Hitachi from the manufacturers in the stream-of-commerce cases on the grounds that Hitachi did not use the owners of the vessel on which it performed conversion work ("manufactured") as distributors in a marketing scheme.[25] Any indirect benefit — such as an increased market for converted ships because of the existence of a port in New Jersey at which such ships could dock — was found to be too attenuated to support jurisdiction. The court compared this indirect benefit to the derivative benefit enjoyed by the local automobile dealer in *World-Wide Volkswagen*, and noted that the benefit in that case was also sufficient.[26]

The court of appeals also rejected plaintiff's argument that the New Jersey court should have jurisdiction over Hitachi because it was foreseeable that a vessel the size of an automobile carrier could travel to, and dock at, any port in the world, including Camden, New Jersey.[27] It found that the nature of Hitachi's conduct (conversion work performed entirely in Japan) did not put the defendant on notice that it might be called into court in New Jersey. Therefore, while a single contact with the forum state may be adequate to support jurisdiction if the suit results from that contact,[28] "forseeability alone" is not sufficient to support jurisdiction.[29] To accept plaintiff's foreseeability argument would be to subject Hitachi to the threat of defending a suit wherever a ship on which it had worked happened to travel. The majority in *De James* felt such a result had been found unacceptable by the Supreme Court in *World-Wide Volkswagen*.[30]

Judge Gibbons, in dissent, argued that the majority's comparison of Hitachi to the local automobile dealer in *World-Wide Volkswagen* was "off

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court noted that special modifications had been made by the defendant manufacturer so that the coaches would be more suitable for use in Hawaii. Id. at 234.

[23] 654 F.2d at 285-86.

[24] Id. at 285.

[25] Id.

[26] Id.

[27] Id. at 286.

[28] Id.

[29] 654 F.2d at 286, citing 444 U.S. at 295-97.

[30] 444 U.S. at 295-97. The Circuit Court noted that it was foreseeable that the ship converted by Hitachi could transport cars to any port in the world. The fortuitous circumstance that the owner of the ship chose to dock in New Jersey was bound to be insufficient to support jurisdiction over Hitachi under the New Jersey long-arm statute as the fortuitous circumstance that the owner of the Volkswagen drove through Oklahoma was insufficient to support jurisdiction over a New York automobile dealer. 654 F.2d at 286.

the mark."[31] Gibbons viewed *World-Wide Volkswagen* as reaffirming "the principle that a manufacturer who injects a product into the stream of interstate commerce may be subject to personal jurisdiction in the state where the product causes harm."[32] The dissent noted the Supreme Court's reaffirmation of the stream-of-commerce line of cases and its "approving reference"[33] to *Gray v. American Radiator and Standard Sanitary Corp*.[34] *Gray*, a stream-of-commerce case, held that an Illinos court had jurisdiction over Titan Valve Manufacturing Co., a foreign corporation, because a valve it manufactured as a component part of radiators allegedly caused injury to an Illinois citizen, within that state.[35] Citing the changing nature of commercial activity[36] (increased specialization and interdependent marketing), *Gray* found that the manufacture and sale of valves to be used in interstate commerce satisfied the *International Shoe* tests of minimum contacts and fairness.[37]

The dissent in *De James* distinguished Hitachi from the local automobile dealer in *World-Wide Volkswagen* on the grounds that Hitachi was not the end of the distributive scheme, but "an integral part of international commerce in Japanese automobiles."[38] The dissent viewed Hitachi as being similar to Titan Valve in *Gray* because Hitachi benefitted "by selling its vessels to shipowners who will take them to New Jersey ports."[39] The dissent further noted that because of the size of the New Jersey ports it was "not 'merely foreseeable', but virtually inevitable that ships Hitachi converts will dock in New Jersey."[40]

The dissent's discussion of *Gray* appears to be substantially on point with the factual situation of *De James*. For the court to accept the reasoning and result of *Gray*, however, the majority would have had to extend and expand *Gray* in two sigificant areas. First, the court would have had to expand the concept of "indirect benefits" to include the profits made by a supplier of a means of distribution. These profits differ from those enjoyed by the manufacturer of a component part in that they are generated through the establishment of a chain of distribution, not through the actual distribution of products. This type of profit is much more indirect than that enjoyed by Titan Valve in *Gray* and an expansion of "indirect benefit" to include Hitachi's profits from automobile carrier conversion would seem to substantially broaden the term.

A second problem in applying *Gray* is that the generally accepted concept of a chain of distribution would have to be expanded in terms of

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[31] Id. at 290.
[32] Id.
[33] Id.
[34] 22 Ill. 2d 432, 176 N.E.2d 761 (1961).
[35] 444 U.S. at 297-98.
[36] 22 Ill. 2d at 442, 176 N.E.2d at 766.
[37] Id.
[38] 654 F.2d at 291.
[39] Id.
[40] Id.

number of links and as to what constitutes a "link." Hitachi, as a supplier of a means of distribution, represents a "link" not present in *Gray* or other stream-of-commerce cases. Furthermore, absent any evidence in the record that the *Magnificence Venture* sailed directly to Camden, New Jersey, or that Camden was an established port in the "distributive scheme" used by Japanese automobile manufacturers, the court would have had to include *any* ultimate destination as being within the chain of distribution. The court of appeals' refusal to expand *Gray* keeps the *De James* holding well within the framework which merited an "approving reference" by the Supreme Court.

The appellant argued, as an alternative to his claim that Hitachi's contact with New Jersey alone was adequate to support jurisdiction, that the service of process made on the Japanese Minister of Foreign Affairs under the Convention on Service Abroad was by a "wholly federal means" such that the national contacts theory should be applied under the reasoning in the district court opinion.[41] The court of appeals accepted, with reservations[42] and only for the purpose of the *De James* appeal, the district court's dicta regarding the national contacts test.[43] However, based on the "legislative history, language, and purpose of the treaty,"[44] the court held that the Convention on Service Abroad did not provide the authority for serving process on a foreign defendant required by Federal Rule 4(e) or 4(i).[45]

Professor Thomas F. Green, Jr. laid the foundation for the "national contacts test" in his article, *Federal Jurisdiction in Personam of Corporations and Due Process*.[46] His thorough dissection of Federal Rule 4 in relation to *Erie R.R. v. Tompkins*,[47] *Pennoyer v. Neff*,[48] and the *International Shoe* line of cases led him to conclude that the due process clause of either the fifth or the fourteenth amendments would not serve to limit the jurisdiction of a federal court with proper venue if the corporation had sufficient contacts with the United States. Professor Green reasoned that, "[i]f either subdivision (3) or (7) of division (9) of rule 4 is complied with and the other provisions of rule 4 are satisfied, no significance . . . should attach to the thin veil of state lines."[49]

Professor Green's theory was accepted by a federal district court in *First Flight Co. v. National Carloading Corp.*[50] As pointed out by the court

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[41] Id. at 286.

[42] Id. at 286 n.3.

[43] Id. at 286. The district court held that if service of process could be made by wholly federal means, all of the defendant's contacts with the U.S. could be aggregated to meet a "national contacts test" and support jurisdiction.

[44] Id. at 290.

[45] Id.

[46] Green, Federal Jurisdiction in Personam of Corporations and Due Process, 14 Vand. L. Rev. 967 (1961) [hereinafter cited as Green].

[47] 304 U.S. 64 (1938).

[48] 95 U.S. 714 (1877).

[49] Green, supra note 48, at 986.

[50] 209 F.Supp. 730 (E.D. Tenn. 1962).

in *De James*, *First Flight* advanced the theory that in a cause of action arising under federal law, the restrictions which the fourteenth amendment places upon state jurisdiction are not applicable. Therefore, the due process clause of the fifth amendment controls, and aggregated national contacts may then be used to meet the general standard of "fairness" required by the fifth amendment.[51] The policy reasons behind the adoption of a national contacts approach included the minimal relative inconvenience of an alien corporation defending a suit in one state in the United States as opposed to another, and the desirability of providing a forum for plaintiffs injured by corporations with de minimus contacts with various states in the United States.[52]

First Flight's acceptance of Professor Green's national contacts theory clouded the limits of jurisdiction for federal claims and was cautiously noted in two cases the following year, more on the grounds of being confusing than controlling.[53] *First Flight* was severely criticized in the 1965 decision of *Scott v. Mid Eastern Airlines Co., S.A.* [54] which specifically rejected national contacts as grounds for jurisdiction over an admiralty case brought under the Federal Death on the High Seas Act[55] on the grounds that "given the array of precedents in this case, the Court can not take it upon itself to change the law as did Judge Wilson in the *First Flight* case — no mean feat for a district judge."[56]

The district court in *De James* noted that the national contacts theory had been rejected by the majority of cases in which it had been presented where there was no statute which provided for nationwide service of process for the federal claim.[57] However, a national contacts test has been applied in cases brought under the Securities Exchange Act of 1934[58] and the Securities Act of 1933[59] which allow for nationwide service of process. Where national service of process is unavailable, Federal Rule of Civil Procedure 4(e)(2) limits jurisdiction of the federal courts by requiring that service of process be made pursuant to the forum state's long-arm statute or other rules "under the circumstances and in the manner prescribed in the statute or rule." Thus a federal court must look to the forum state in determining whether it has jurisdiction over an out-of-state defendant.[60]

The *De James* court's decision not to apply the national contacts test

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[51] 491 F.Supp. at 1281.

[52] Id. at 1281-82.

[53] Chavan v. E.I. DuPont de Nemours and Company, 217 F.Supp. 808 (E. D. Mich. 1963); Weinberg v. Colonial Williamsburg, Inc., 215 F.Supp. 633 (E.D.N.Y. 1963).

[54] 240 F.Supp. 1 (S.D.N.Y. 1965).

[55] Pub. L. No. 165, 41 Stat. 537 (1920) (codified at 46 U.S.C. §§761-768 (1976)).

[56] 240 F.Supp. at 4.

[57] 491 F.Supp. at 1282.

[58] 15 U.S.C. §§ 78a-78111 (1976 & Supp. IV 1980). See Oxford First Corp v. PNC Liquidating Corp., 372 F.Supp. 191 (E.D. Pa. 1974).

[59] 15 U.S.C. §§ 77a-77bbbb (1976 & Supp. IV 1980). See Stern v. Gobeloff, 332 F.Supp. 909 (D. Md. 1971).

[60] 491 F.Supp. at 1283.

was foreshadowed in *Edward J. Moriarty & Co. v. General Tire & Rubber Co.*[61] In examining the question of defendant's minimum contacts in a claim brought under the Sherman Act the court found that the "appropriate inquiry to be made in a federal court where the suit is based on a federally created right is whether the defendant has certain minimal contacts with the United States so as to satisfy the due process requirements under the Fifth Amendment."[62] The court held, however, that such an inquiry was not possible because neither Congress nor the Supreme Court had provided for substituted service on alien corporations with minimal contacts with the United States. This left as a barrier the requirement of Federal Rule 4(e)(2) that service made pursuant to a state long-arm statute be made "under the circumstances and in the manner prescribed in the statute."[63]

Two more recent cases brought under the Death on the High Seas Act, which were not cited by the court, have applied the national contacts test in determining jurisdiction. In 1973, the case of *Holt v. Klosters Rederi A/S*[64] held that a federal court in Michigan had jurisdiction over a Norwegian corporation on the basis that the "defendant's contacts with the United States, both qualitatively and quantitatively, are constitutionally sufficient to enable this court to render a binding judgment against it."[65] In 1980, *Fosen v. United Technologies Corp.*[66] noted the controversy still surrounding the issue, but held that "federal jurisdictional principles govern this in personam admiralty action, and thus the minimum contacts required for jurisdiction must be established with the United States and not necessarily with the state of New York."[67]

The court of appeals did not re-examine the merits of the "national contacts test," but having accepted the district court's dicta that such a test could be used if service of process was made by wholly federal means, moved directly to an analysis of the Convention on Service Abroad to determine if it constituted such a wholly federal means.[68] Prior to the ratification of the treaty, significant problems existed with international judicial assistance for service of process primarily due to inconsistent procedural requirements of the various nations.[69] The problem of inconsistency was further complicated in the United States because of the existence of a separate procedural jurisdiction in each state and the District of Columbia.[70] The court of appeals found that it was this problem of inconsistency and not a lack of authority which the Convention sought

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[61] 289 F.Supp. 381 (S.D. Ohio 1967).
[62] Id. at 390.
[63] Id.
[64] 355 F.Supp. 354 (W.D. Mich. 1973).
[65] Id. at 358.
[66] 484 F.Supp. 490 (S.D.N.Y. 1980).
[67] Id. at 498.
[68] 654 F.2d at 286-87.
[69] Id. at 287.
[70] Commission on International Rule of Judicial Procedure, S. Rep. No. 2392, 85th Cong.,

to solve. The Third Circuit held that the purpose of the Convention is clearly set forth in its preamble:[71]

> The States signatory to the present Convention, Desiring to create appropriate means to ensure that judicial and extrajudicial documents to be served abroad shall be brought to the notice of the addressee in sufficient time, Desiring to improve the organization of mutual judicial assistance for that purpose by simplifying and expediting the procedure, Have resolved to conclude a Convention to this effect and have agreed upon the following provisions. . . .[72]

There is no reference to creating additional authorization of jurisdiction either in the preamble or in the text of the convention.

The Convention on Service Abroad seeks to provide a method of securing judicial assistance which is consistent throughout the nations which are a party to it by providing that each participant designate a Central Authority to process requests for service.[73] Service may still be made, however, without relying on the Convention so long as the nation which is receiving service does not object to the method used.[74]

Appellant sought to base jurisdiction on an application of the Convention in combination with Federal Rules 4(d)(3), 4(e) or 4(i).[75] Rule 4(d)(3) states that personal service may be made "by delivering a copy of the summons to ... any other agent authorized by appointment or by law to receive service of process" when such agent can be found within the forum. Only the United States Marshall's Office handled a copy of the complaint in New Jersey, and under the terms of the Convention, that office "merely transmits" to the Japanese Minister of Foreign Affairs a request for service.[76] Actual service of process took place in Japan, not within New Jersey, thus the court found that De James' reliance on rule 4(d)(3) was misplaced.[77]

Under Federal Rule 4(e) or 4(i) valid service can be made only when there exists a method for effecting such service and a federal or state statute which authorizes it. Appellant argued that the Convention on Service Abroad provided such authorization.[78] The court rejected

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2d Sess., reprinted in [1958] U.S. Code Cong. and Ad. News 5201, 5206. The Commission noted in 1958 that:

> The problem is procedural.... It relates principally to the recognition by courts here and abroad of the service of process in foreign jurisdictions, proof of foreign laws, public and private documents, and the introduction of testimony taken abroad by way of depositions or letters rogatory. Existing means for serving judicial documents abroad, securing records or examining witnesses in a foreign territory have been found to be cumbersome and insufficient. Lawyers have discovered this in many parts of the world. It is all but impossible to serve a paper without costly intervention of a foreign attorney.Id.

[71] 654 F.2d at 288.

[72] Convention on Service Abroad, supra note 13, 20 U.S.T. at 362.

[73] 654 F.2d at 288.

[74] Id.

[75] Id. at 286-90.

[76] Id. at 287.

[77] Id.

[78] Id. at 289-90.

this argument on the grounds that the legislative history revealed no such congressional intent.[79] The court stated that the effect of accepting appellant's contention would be to read into the Convention the equivalent of " 'World-wide' service of process in all federal question, admiralty, and diversity cases, while at the same time not authorizing nationwide service of process for those same claims."[80] The court's review of the Senate Executive Report[81] showed that the testimony before the Senate Committee consistently "emphasized that the treaty would not effect any substantial changes in the operation of courts in the United States."[82] The court's finding that the Convention on Service Abroad did not provide the authorization for service of process on a foreign defendant as required by Rule 4 meant that the service made on Hitachi pursuant to the Convention was not by wholly federal means.[83] Therefore, such authority could only come from the New Jersey long-arm statute, and reliance upon that statute precludes the application of the national contacts test.

The appellate court's refusal to accept the Convention on Service Abroad as authority for service of process on a foreign defendant finds support in the legal press. One commentator[84] noted "[P]rocess served outside the federal court's territory pursuant to a state rule, is valid only if the state court would have had long-arm jurisdiction."[85] Thus the Convention is viewed only as a means of improving service of process, not as an extension of jurisdictional authority. The continued need for a state long-arm statute as a basis for jurisdiction is clearly seen.[86]

Congressional action to allow nationwide service of process for admiralty claims would produce substantial benefits for plaintiffs suing alien corporations. Had plaintiff De James secured jurisdiction over Hitachi he would have enjoyed the strategic advantage of having both those in control of the vessel and the "manufacturer" of the converted portion of the ship in the same action. The potential for "fingerpointing" among the defendants would have been virtually eliminated: the defendant or defendants in court could not sidestep liability by laying

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79 Id. at 289.

80 Id.

81 Senate Comm. on Foreign Relations, Convention on the Service Abroad of Judicial and Extrajudicial Documents, S. Exec. Rep. No. 6, 90th. Cong., 1st Sess. 11-12 (1967).

82 654 F.2d at 289.

83 Id. at 290.

84 See Note, The Effect of the Hague Convention on Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, 2 Cornell Int'l L. J. 125 (1969).

85 Id. at 129 n. 16.

86 The court of appeals pointed out "[t]he anomaly of a federal court being limited by the requirements of the fourteenth amendment in a nondiversity case where service must be made pursuant to a state long-arm rule." 654 F.2d at 284. Normally, in a nondiversity case, a federal court would be limited only by the due process restrictions the fifth amendment imposed on the federal government, and not those which the fourteenth amendment imposes on the states. The court suggested that congressional authorization of national service of process for admiralty cases would "rectify" this anomaly. Id.

out a case against a defendant not at trial. Should the court find that negligence caused plaintiff's injuries, it could impose liability on the proper party without speculating as to the merits of possible defenses which might be raised at a subsequent trial. Economically, one trial reduces the burden plaintiff must bear to fully litigate his claim.

Further reductions in cost would occur if that one trial was held in New Jersey because of the savings in travel time and expense. Plaintiff, possible witnesses to the accident, and physical evidence or experts who may have examined it are all likely to be in the New Jersey area. Plaintiff's employer and doctors who treated him after the accident are potential witnesses to damages and lost earnings sustained by the plaintiff and are also likely to be within a convenient distance to a New Jersey court. The cost of a trial requiring these parties to travel to a foreign country or distant state could easily exceed the amount recoverable by the plaintiff. As a matter of practicality, this would deprive him of means of redress for his injury, a result far less likely to occur if all of a foreign corporation's contacts with the United States could be aggregated under a national contacts test.

Counterbalancing these benefits to potential plaintiffs are the burdens placed upon an alien corporation forced to defend itself in a distant forum with which it has had little contact. However, as the *De James* court[87] and others[88] have recognized, multinational corporations headquartered abroad may be inconvenienced by a suit in the United States, but the relative inconvenience of defending in one U.S. state is no greater than defending a suit in another U.S. state. Where an alien corporation has substantial relevant contacts with one state and few with the forum state that has acquired jurisdiction through national contacts, a change of venue may still be granted to transfer the case to a more convenient forum.[89] This safeguard protects defendants from abuses in application of the national contacts test. The scale is further tipped in favor of applying the national contacts test when one considers the interest of the United States in providing its citizens with a necessary forum.[90]

The unrestricted use of the national contacts test, especially in diversity cases might require a foreign corporation to defend an action in a state with which it deliberately maintained no contacts to avoid jurisdiction. It would be patently unfair to subject that defendant to whatever state laws the forum might happen to have on its books. Admiralty law, however, by its very nature, may be fairly applied to virtually any defendant involved in trade with the United States. Admiralty law has

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[87] 491 F. Supp. at 1282.

[88] Centronics Data Computer Corp. v. Mannesmann, A.C., 432 F. Supp. 659, 663-64 (D.N.H. 1977); Cryomedics, Inc. v. Spembly, Ltd., 397 F. Supp. 287, 292 (D. Conn. 1975).

[89] See supra note 64, at 359.

[90] See McGee v. International Life Insurance Co., 355 U.S. 220, 223 (1957), for a discussion of a state's "manifest interests." Such interests should likewise apply when the sovereign is a nation and the "foreign forum" is another nation with a potentially different legal system.

developed along "rather uniform lines in the several maritime nations, in a very real sense a body of general maritime law has developed internationally."[91]

In *Arroyo v. M/V Island Queen II*[92] the Federal District Court of Puerto Rico held that, "It is a fundamental principle of the maritime law of the United States that it is to be uniform throughout the United States."[93] This principle, combined with the grant of exclusive admiralty jurisdiction to the federal court in Article III of the Constitution and in the Judiciary Act,[94] gives admiralty law many of the characteristics of a federally created right.

Under the holding of *De James*, the plaintiff was left in the undesirable position of either bringing a separate suit against Hitachi or attempting to locate a more distant forum which has jurisdiction over all defendants. His practical chances of recovery have been lessened and his potential expenses multiplied. This failure of the United States to adequately provide its citizens with effective means of redress against an alien corporation should be remedied. Consistent court interpretations of "minimim contacts" as including more indirect benefits enjoyed by a foreign defendant could eliminate the gap in the United States jurisdictional law. Alternatively, the use of a national contacts test for all federal claims would allow jurisdiction where a foreign corporation clearly would not be seriously inconvenienced by defending a suit in the United States. Given the current trend to restrict long-arm jurisdiction, congressional action to provide for nationwide service of process in admiralty suits and other federal claims may be required to eliminate the most unfair lapses of jurisdictional law, without tampering with the accepted concepts of *International Shoe*.

—R.L. ADAMS

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91 2 C.J.S. *Admiralty* §3 (1972).
92 259 F. Supp. 15 (D.P.R. 1966).
93 Id. at 16.
94 28 U.S.C. §1333 (1976).